

EXHIBIT 38

1 IN THE UNITED STATES DISTRICT COURT
2 DISTRICT OF COLUMBIA

3 NICOLAS TALBOTT, et al.) CIVIL NO.:
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8 Transcript of Motions Hearing
9 Before the Honorable Ana C. Reyes
10 United States District Judge

11 APPEARANCES:

12 For the Plaintiffs:

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24 Proceedings recorded by machine shorthand; transcript produced
25 by computer-aided transcription

1 P R O C E E D I N G S
2

3 THE CLERK: This is civil action 25-240, Nicolas
4 Talbott, et al., versus United States of America, et al.

5 Counsel, please state your appearances for the
6 record.

7 MS. LEVI: Hi, this is Jennifer Levi for the
8 plaintiffs.

9 MS. LIN: And Jean Lin and Jason Lynch for the
10 defendants.

11 THE COURT: All right. Defense, whoever's arguing
12 come on up.

13 Mr. Manion only lasted one hearing? That was all he
14 could handle?

15 MS. LIN: Yup.

16 THE COURT: Okay. Well, we've gone through
17 Mr. Lynch. We've gone through Mr. Manning. Let's see how you
18 do.

19 MS. LIN: It wasn't clear Mr. Lynch was going to be
20 able to make it, because he was coming from somewhere else.

21 THE COURT: All right. Well, I'm always glad to
22 have Mr. Lynch here. So, first of all, I have a motion to
23 dissolve or stay. Right now the injunction is ongoing. It's
24 not stayed right now. You all understand that; right?

25 MS. LIN: Understood.

THE COURT: All right. So secondly, the last time

1 we were here, we spoke about a tweet that the Department of
2 Defense sent out, saying that all transgender troops were --
3 are disqualified absent exemption; right?

4 MS. LIN: Yes.

5 THE COURT: Okay. And Secretary Hegseth retweeted
6 that; right?

7 MS. LIN: Yes.

8 THE COURT: And he's the guy who wrote the policy;
9 right?

10 MS. LIN: The DoD policy was written based on
11 delegated authority, um --

12 THE COURT: He -- Secretary Hegseth didn't issue his
13 policy? I thought it came under his name?

14 MS. LIN: Um -- the February 26th policy was issued
15 by undersecretary. It was --

16 THE COURT: Secretary Hegseth saw the policy and
17 signed off it; right? It didn't go out without him looking at
18 it?

19 MS. LIN: I don't know the deliberative process for
20 that aspect.

21 THE COURT: You don't even know if Secretary Hegseth
22 has seen his own policy?

23 MS. LIN: If authority to issue a policy is
24 delegated to a subordinate, the subordinate would then have
25 the same authority as the secretary to issue the policy.

1 THE COURT: Am I seriously hearing from you all
2 right now that sitting here today, you all can't tell me
3 whether the Secretary of Defense has seen the policy to ban
4 transgender troops?

5 MS. LIN: Your Honor, my assumption is that he has.
6 But I'm just saying, based on the documentary information we
7 have before us, we know who issued the policy.

8 THE COURT: All right. Well, I would like an answer
9 by the end of the day as to whether or not we can all agree
10 that Secretary Hegseth has seen and signed off on this policy,
11 okay? End of the day, 5:00 o'clock, I want confirmation, or
12 not confirmation.

13 In any event, Secretary Hegseth who is the top
14 person at the Defense Department, right, pentagon, whatever,
15 he's the top person?

16 MS. LIN: Yes.

17 THE COURT: What he says goes, subject to the
18 Constitution; right? And the president, I guess.

19 MS. LIN: If Your Honor's referring to the tweet --

20 THE COURT: I'm asking a question. I'm not
21 referring to anything right now. I'm asking a question. He's
22 the head guy; right?

23 MS. LIN: Yes.

24 THE COURT: Everyone in the Department of Defense
25 reports to Secretary Hegseth; right?

1 MS. LIN: Correct.

2 THE COURT: If there are questions about how a
3 policy is to be interpreted and implemented, the one who has
4 the final say, other than the president is Secretary Hegseth;
5 right?

6 MS. LIN: If he was consulted. I mean, there are a
7 lot of decisions being made every single day, not every
8 decision --

9 THE COURT: Right. But at the end of the day -- at
10 the end of the day what he says goes. If a policy is being
11 interpreted in a way that he doesn't like, he can say no
12 that's the wrong interpretation; right?

13 MS. LIN: That's my understanding.

14 THE COURT: Okay. And he retweeted that this was a
15 quote, transgender -- that all transgender troops are
16 disqualified absent exemption; right?

17 MS. LIN: That's what the tweet said.

18 THE COURT: Well, he tweeted that, right, it went
19 under his name?

20 MS. LIN: Yes.

21 THE COURT: And when we were here on March 12th, you
22 all told me never you mind, Your Honor, he said it but he
23 didn't really mean it. And I said, no, I'm going to take him
24 at his word. And I said, if the policy is not -- does not
25 cover all transgender troops, get me a declaration. I gave

1 you until Monday. We had -- the hearing was on what
2 Wednesday? Thursday. I gave you until Monday. Give me a
3 decision from Secretary Hegseth, or someone else with
4 authority, that says that tweet was wrong. And then I'll take
5 into consideration in my opinion. I said that; right?

6 MS. LIN: Yes, you did, Your Honor.

7 THE COURT: And I didn't get a decision, did I?

8 MS. LIN: No, but we did submit a notice to the
9 Court explaining that we stand by our brief. And that further
10 guidance was going to come out by no later than March 26th.

11 THE COURT: Okay. Well, that wasn't an answer to my
12 question. I mean, I guess you did answer my question.
13 There's no -- there is no decision from Secretary Hegseth or
14 anyone else contradicting the Department of Defense's tweet
15 from an official account that was retweeted by Secretary
16 Hegseth, from his original tweet, from his government account,
17 that this covers all transgender troops; right?

18 MS. LIN: Right, but Your Honor, may I respond? I
19 have two responses to that.

20 THE COURT: No, I'm going to let -- you know, how
21 this works, Ms. Lin. I'm going to let you talk as much as you
22 want after I finish asking my questions.

23 I want someone to explain to me -- I mean the last
24 time we were here, the excuse was it was shorthand. And then
25 in my opinion, I'm sure you've read it, I was like, well, that

1 doesn't make any sense because transgender troops are
2 disqualified absent exemption a nine words. And I gave a nine
3 word hypothetical tweet that said gender dysphoria is a
4 disqualifying medical condition, also nine words. So the
5 short form excuse was, I mean, laughable, and frankly,
6 ridiculous. And what's the excuse now?

7 MS. LIN: Your Honor, the government doesn't operate
8 by tweets, right, so we consistent --

9 THE COURT: No, no, it does --

10 MS. LIN: The --

11 THE COURT: Ms. Lin -- I am not going to abide by
12 government officials saying one thing to the public, but --
13 saying what they really mean to the public and then coming in
14 here to court and telling me something different like I'm an
15 idiot. Okay. I'm not an idiot.

16 MS. LIN: With all due respect, Your Honor, the
17 operative document is the guidance that's issued. And so --

18 THE COURT: Well, we're going to get to the
19 operative documents, because even if I don't pay attention to
20 the tweet, even if I disregard the tweet, it still covers all
21 transgender people. And we're going to get to that in a
22 moment.

23 I want someone in the government to explain to me
24 why the Department of Defense and the Secretary of Defense are
25 saying one thing on government channels to millions and

1 millions of Americans, and then coming into court and saying
2 something different. Why is that happening?

3 MS. LIN: Your Honor, the guidance document --

4 THE COURT: That's not -- Ms. Lin, that is not
5 answering my question. I want an answer to my question. Why
6 is that happening? Why are people saying one thing to the
7 public, our elected officials saying one thing to the public
8 and other things in court?

9 MS. LIN: Your Honor, I can't explain why the tweet
10 wasn't elaborate --

11 THE COURT: Well, if the tweet was wrong -- if the
12 argument is the tweet was wrong and it was too broad, and
13 Secretary Hegseth was just being inexact, because sometimes
14 people are inexact, why did I not get a declaration saying
15 that?

16 MS. LIN: Your Honor, as we said in our filing that
17 day, we stand by --

18 THE COURT: I understand you stand by the brief, Ms.
19 Lin. What I'm saying is that there's a disconnect between
20 what the Secretary of Defense and the president are saying to
21 the public and what you are telling me here in court. And I'm
22 sorry, but no. No. Enough.

23 MS. LIN: Your Honor, even if there were a
24 disconnect, the guidance memo this morning clarified that.
25 And Your Honor's bound by the policy that the DoD actually is

1 going to implement, not a policy that Your Honor thought
2 should be the one that --

3 THE COURT: Oh, I'm sorry, Ms. Lin, if you hear --
4 are you saying that I'm the one who is saying that this is a
5 transgender ban?

6 MS. LIN: We consistently --

7 THE COURT: I'm sorry, Ms. Lin, did you just say
8 that I am the one who called this a transgender ban?

9 MS. LIN: That's what Your Honor's opinion said
10 and --

11 THE COURT: Ms. Lin, it was a tweet by the Secretary
12 of Defense.

13 MS. LIN: Your Honor, I --

14 THE COURT: It was a tweet by the Secretary of
15 Defense. The idea that I'm the one who said this, I have no
16 words for. The Secretary of Defense called it a transgender
17 ban. I gave him the opportunity, I gave you the opportunity
18 to have anyone from the Department of Defense send me a sworn
19 declaration saying that it was not a transgender ban, saying
20 that the Secretary of Defense misspoke. And I very carefully
21 waited to issue my opinion until Tuesday because I had given
22 you all until Monday to get me a declaration that it is wrong.
23 So you are saying one thing in public. You're saying a
24 different thing in court. And I gave you the opportunity to
25 correct the thing in public and you didn't take it. That is

1 the evidence before me in the record, right? So what am I --
2 what inference am I supposed to draw from that, Ms. Lin?

3 MS. LIN: Your Honor, we respectfully submit that
4 the inference that this is a broad transgender ban is
5 incorrect --

6 THE COURT: Okay. Fine, Ms. Lin, perfect. I want a
7 declaration from the Secretary of Defense that says that.

8 MS. LIN: Your Honor, the -- cabinet secretaries are
9 dealing with lots and lots of busy things on a daily basis
10 and --

11 THE COURT: Fine. Get me the declaration from
12 undersecretary who issued the policy.

13 MS. LIN: That --

14 THE COURT: Ms. Lin, you're not going to get a
15 declaration, because no one is going to give me a sworn
16 declaration. Just like no one gave me a sworn declaration
17 when I offered it that pronouns affect military readiness.

18 MS. LIN: Your Honor --

19 THE COURT: -- no one is going to say that under
20 oath.

21 MS. LIN: And I'm sorry I'm just repeating myself,
22 but the document, the guidance documents speak for
23 themselves.

24 THE COURT: The documents do speak for themselves
25 and we're going to get to the documents. But do you know who

1 also speaks for himself? The Secretary of Defense.

2 You know, this idea that you all can just come in
3 here and pretend or have us pretend that what's happening
4 isn't actually happening, is totally unacceptable. It is -- I
5 mean, it's just -- everyone knows what this ban is intended to
6 do. Everyone knows. Everyone knows. And Mr. -- Secretary
7 Hegseth said it. He said what a bunch of lawyers tried to
8 keep out of the policy, which was using the word
9 "transgender." And Secretary Hegseth said it. Because that
10 is obviously what it does. And we're about to get to how it
11 does exactly that even without the tweet.

12 But, Ms. Lin, I am not going to abide by people
13 coming in here and lying to me. Okay. I'm not going to abide
14 by people coming in here and telling me that I'm supposed to
15 not pay attention to what's happening in the real world. And
16 I'm sorry, I take it back, I didn't mean you were lying to me.
17 That's the wrong word. I take that back. Please strike that
18 from the record, Ms. Asif. I take that back. I'm not going
19 to come here and have people tell me that what I'm seeing and
20 what I'm hearing is not what I'm seeing and what I'm hearing.
21 The Court is not going to be gas lit, okay?

22 MS. LIN: Your Honor, the tweet was not filed in
23 this court --

24 THE COURT: I took notice of the tweet, so it's in
25 the record and I gave you all a chance to object.

1 MS. LIN: And we explained at the last hearing the
2 significance or the lack thereof of the tweet.

3 THE COURT: Okay. Well, you and I are going to have
4 to agree to disagree on whether or not the tweet has meaning.
5 So here's my -- I mean, you know, what do I know, right? When
6 the Secretary of Defense says something is a transgender ban,
7 I assume the Secretary of Defense means it's a transgender
8 ban. I mean, I'm just that simple of a person, I guess. I
9 don't think it's that complicated.

10 But let's get to the actual -- well, before I get to
11 the policy, tell me what part of my opinion is now wrong
12 because of the interpretation -- let's assume that --

13 MS. LIN: Your Honor, may I pause that, I'm getting
14 message that the public line is not working, is that --

15 THE COURT: Can we put the public line back on,
16 please?

17 THE CLERK: It's going to be hard to connect it
18 because we're going to lose Ms. Levi and we're going to lose
19 audio.

20 (Discussion off the record.)

21 THE COURT: What part of my opinion is wrong because
22 of -- well, let me rephrase this, I know you view the whole
23 thing as wrong. What part of the opinion is different, or
24 should I reanalyze because of this new policy update?

25 MS. LIN: Well, Your Honor's opinion's premise on

1 the idea that this is a broad scope --

2 THE COURT: No, it's not. It's not premised on
3 that, because I was very careful not to premise on that. So I
4 just I want you to go through the opinion for me and tell me
5 sort of section-by-section, and tell me which section changes.

6 MS. LIN: So the first thing that comes to mind, of
7 course, is the idea that this is a classification based on
8 trans identifying people being disqualified from military
9 service. So and our position remains consistently has been
10 that it's the medical condition of gender dysphoria that is
11 the basis for disqualification from military service, so
12 there's --

13 THE COURT: Right. But it's still sex-based; right?
14 I mean gender dysphoria is still sex based.

15 MS. LIN: We disagree --

16 THE COURT: It's still -- I mean you still can't
17 discuss it without discussing sex or gender. I mean, if you
18 tell me how you can discuss this ban without using the word
19 "sex," female or male, go ahead.

20 MS. LIN: Your Honor, I think we went over the
21 disagreement with the Court that we do not believe that it is
22 sex discrimination because it's a --

23 THE COURT: Okay. But --

24 MS. LIN: -- medical condition.

25 THE COURT: Right. So now I'm testing that, right,

1 I'm asking questions about it so that I understand, maybe
2 you'll convince me that I'm wrong. Explain to me how a
3 diagnosis of gender dysphoria or keeping out everyone with
4 gender dysphoria is not sex-based?

5 MS. LIN: Because every service member who has that
6 condition, whether the service member is male or female, is
7 disqualified unless a waiver applies.

8 THE COURT: Okay. But it's still a sex
9 classification. I mean, you disagree with me if it's
10 transgender or if it's gender dysphoria, but the same analysis
11 applies; right?

12 MS. LIN: If I understand Your Honor correctly. So
13 we think that regardless of the service member's gender, if
14 the service members has gender dysphoria then that's a
15 disqualifying medical condition. And that's why we think
16 that --

17 THE COURT: Okay. Because your argument is this is
18 all just about a medical condition; right?

19 MS. LIN: That's correct.

20 THE COURT: Okay. All right. What other part -- so
21 let's just go through my opinion. So the legal analysis of
22 military deference won't change; right?

23 MS. LIN: Correct.

24 THE COURT: Okay. The analysis of how quickly the
25 policy issued doesn't change; right?

1 MS. LIN: Correct.

2 THE COURT: The discussion of the studies doesn't
3 change; right?

4 MS. LIN: Correct.

5 THE COURT: All right. The fact that the Mattis
6 policy is eight years outdated doesn't change; right?

7 MS. LIN: Correct. But if I may just interject, you
8 know, so if this is not a sex classification or a
9 quasi-suspect classification, then the then the level of
10 judicial scrutiny --

11 THE COURT: I understand, Ms. Lin --

12 MS. LIN: That's how it infects all the other
13 considerations.

14 THE COURT: Well, we're actually going to get to
15 that, but just humor me because I spent a lot of time on this.
16 So the discussion of the Mattis policy and the fact that it's
17 seven or eight years out of date doesn't change; right?

18 MS. LIN: Correct the Psychological Health Center
19 review doesn't change; right?

20 MS. LIN: Right.

21 THE COURT: The 2025 medical literature review
22 doesn't change; right?

23 MS. LIN: Right.

24 THE COURT: The cost analysis doesn't change at all;
25 right?

1 MS. LIN: Right.

2 THE COURT: In fact, it's exactly on point because
3 the cost that we analyzed in the cost was cost for gender
4 affirming care for gender dysphoria; right?

5 MS. LIN: I'm sorry was --

6 THE COURT: The cost discussion that I had in my
7 opinion, that doesn't change because that was actually based
8 just on gender dysphoria cost; right?

9 MS. LIN: Correct.

10 THE COURT: The discussion involving missing
11 evidence doesn't change; right?

12 MS. LIN: So I mean, I think that was premised on
13 the idea that -- I believe this is the section where Your
14 Honor said that the DoD doesn't even know how many people who
15 identify as trans individuals and so, you know --

16 THE COURT: How many people identify with -- how
17 many people have gender dysphoria right now in the military?
18 You don't know that either.

19 MS. LIN: It's something that can be more
20 ascertainable based on the code --

21 THE COURT: We're going to get to how it's
22 ascertained, but right now you don't know how many people with
23 gender dysphoria are in the military; right?

24 MS. LIN: I personally don't, but --

25 THE COURT: No one knows.

1 MS. LIN: -- I don't think so.

2 THE COURT: No, no one knows because I asked and you
3 all gave me stats from 2017 -- from 2017 to 2021, right, and
4 it was under 2,000 for that five-year --

5 MS. LIN: That's the data we had.

6 THE COURT: Okay. So you don't know today how many
7 people have gender dysphoria in the military; right?

8 MS. LIN: That's correct.

9 THE COURT: Because you don't track that; right?

10 MS. LIN: Correct.

11 THE COURT: And because there's no wealth of
12 complaints about people with gender dysphoria, right, you
13 don't have a -- you don't have a problem that you're looking
14 at saying we have all these complaints of people with gender
15 dysphoria; right?

16 MS. LIN: I can't agree with that characterization,
17 Your Honor, because --

18 THE COURT: Oh, you do have a database of
19 complaints?

20 MS. LIN: Not database of complaints, but we haven't
21 investigated -- or there --

22 THE COURT: You haven't investigated, that's my
23 whole point. That's the whole point of the opinion.

24 MS. LIN: I haven't, but I don't know if DoD has.

25 THE COURT: Well, there's been no investigation in

1 anything I've seen. And I asked you all this question and you
2 told me you didn't know.

3 MS. LIN: The idea that complaints filed at the low
4 levels of the military structure that didn't rise up to the
5 leadership level is something that just is a fact.

6 THE COURT: Well, that's not actually --

7 MS. LIN: -- complaints.

8 THE COURT: Okay. I understand that's the
9 government's position, but if there are low-level complaints
10 and they're not getting raised, then they can't be that
11 serious of a low level complaint; right?

12 MS. LIN: Your Honor, I don't think the seriousness
13 is the kind that --

14 THE COURT: Okay. In any event --

15 MS. LIN: -- to the top.

16 THE COURT: In any event, you can't tell me right
17 now, there's nothing in the record right now that tells me how
18 many complaints there have been with respect to unit cohesion
19 and military readiness, right, with respect to gender
20 dysphoria?

21 MS. LIN: It's not in the record. But I was just
22 pointing out that in this section this is where Your Honor
23 said we didn't even have information about --

24 THE COURT: Okay. Well, let's go through the
25 missing evidence section bit-by-bit, okay. You don't track

1 individuals by gender identity; right?

2 MS. LIN: Correct.

3 THE COURT: All right. You don't know how many
4 people with gender dysphoria are in the military correct;
5 right?

6 MS. LIN: We don't have that number, but if they
7 have a diagnostic code, that corresponds to gender dysphoria,
8 then that can be determined.

9 THE COURT: Okay. But you don't have -- you didn't
10 have that before you issued the policy, because you don't have
11 it now; right.

12 MS. LIN: I don't have it now, correct.

13 THE COURT: Okay. You don't have a breakdown of
14 people in the military by gender, race, service or occupation;
15 right?

16 MS. LIN: I don't know the answer to that.

17 THE COURT: Okay. You don't have any evidence that
18 people with gender dysphoria are inherently unfit to serve;
19 right?

20 MS. LIN: Correct.

21 THE COURT: Okay. You don't have any evidence at
22 all that having gender dysphoria is inconsistent with honesty,
23 humility, and integrity; right?

24 MS. LIN: Right. Your Honor, I think --

25 THE COURT: Ms. Lin --

1 MS. LIN: My apologies.

2 THE COURT: You don't have any evidence that having
3 gender dysphoria conflicts with a soldier's commitment to an
4 honorable, truthful, and disciplined lifestyle; right?

5 MS. LIN: Other than the determination by military
6 leaders how --

7 THE COURT: We don't even know what military leaders
8 made this determination. Right now you can't even tell me
9 that the Secretary of Defense made this determination. By the
10 way, who did make this determination? Who in the military was
11 responsible for determining that this policy to exclude gender
12 dysphoria -- people with gender dysphoria is necessary?

13 MS. LIN: So the policy itself has the letterhead of
14 the office and the official who has been designated to issue
15 the policy.

16 THE COURT: Okay. And who is that?

17 MS. LIN: It was at the time Mr. Dill, D-i-l-l.

18 THE COURT: Mr. Dill has left or where is Mr. Dill
19 now?

20 MS. LIN: Mr. Dill has a different position now.
21 And the person who holds that same position is the official
22 that issued the policy this morning.

23 THE COURT: Okay. Who did those -- who did Mr. Dill
24 confer with before issuing the policy?

25 MS. LIN: I'm not in a position to talk about the

1 government's deliberative process.

2 THE COURT: No, this isn't about deliberative
3 process, Ms. Lin. This is about you all are telling me this
4 is considered military judgment and I'm just asking who was
5 part of that judgment. It's the same information that you
6 would have if you had a privilege discussion, who was in the
7 room. I'm not asking what the discussion was, just who was
8 part of the discussion.

9 MS. LIN: I'm not -- I don't have the information
10 about who all were involved in the deliberation.

11 THE COURT: You know, what, no. You can't come in
12 here and say one -- we don't know if the Secretary of Defense
13 even looked at this policy, one person issued the policy, and
14 it was deliberated. When you can't tell me who deliberated
15 with Mr. Dill, if anyone.

16 MS. LIN: Your Honor, I mean, there is a
17 long-standing doctrine of according good faith to the
18 government function and the processes, there is a official --

19 THE COURT: Okay.

20 MS. LIN: -- delegated the authority to issue this
21 declaration. And I respectfully ask the Court not to assume
22 that is just pulled out of thin air --

23 THE COURT: Well --

24 MS. LIN: -- because there are people that were
25 part of the delib --

1 THE COURT: Well, fine. Tell me who the people are.
2 Tell me who the people are.

3 MS. LIN: I don't have that information now and we
4 don't --

5 THE COURT: How do you not have that information
6 after three hearings of this, of me basically -- and an entire
7 opinion, saying that you all can't even tell me who was part
8 of this?

9 MS. LIN: Your Honor, even if this were an APA case,
10 which this is not, and we have an administrative record, we
11 have the documents, we don't then say and tell us everybody
12 who might be part of -- who touched this administrative
13 record --

14 THE COURT: I'm not asking for everybody. I'm just
15 asking for two names. We have Mr. Dill, just give me one more
16 name. Just give me one more name.

17 MS. LIN: That was part of --

18 THE COURT: Part of deliberating this policy.

19 MS. LIN: I don't have that information now.

20 THE COURT: Okay. You don't have any information on
21 the analysis on military readiness of losing potentially
22 thousands of people with gender dysphoria, if that's how many
23 there are; right?

24 MS. LIN: Your Honor, those sections of your opinion
25 didn't change; correct.

1 THE COURT: Okay. You still don't have any response
2 to all the plaintiffs declarants; right?

3 MS. LIN: What does that mean?

4 THE COURT: The plaintiff's put in a number of
5 declarations from the people who were involved in integrating
6 transgender people into the military. And they all uniformly
7 testified that they did not create any issues. And I still
8 don't have any evidence from the defense on that; right?

9 MS. LIN: Correct.

10 THE COURT: Okay. The ripeness discussion stays the
11 same; right?

12 MS. LIN: Yes.

13 THE COURT: The -- my analysis of the deference to
14 the military stays the same; right?

15 MS. LIN: Yes.

16 THE COURT: You guys disagree on *Bostock*; right?

17 MS. LIN: Yes.

18 THE COURT: Okay. And you disagree -- I guess the
19 question on whether people with gender dysphoria are a suspect
20 class might change, but you would agree with me that everyone
21 with gender dysphoria is transgender; right?

22 MS. LIN: Yes.

23 THE COURT: Okay. There might be some people with
24 transgender -- there might be some people who are transgender
25 who never had gender dysphoria; right?

1 MS. LIN: Correct.

2 THE COURT: But you don't know what percentage that
3 is; right?

4 MS. LIN: Correct.

5 THE COURT: All right. And certainly gender
6 dysphoria is not going to -- banning gender dysphoria is not
7 going to ban any class of individuals other than transgender
8 people; right?

9 MS. LIN: They overlap, but it is not the same
10 class.

11 THE COURT: People with gender dysphoria are a
12 subset of transgender people; right?

13 MS. LIN: Yes.

14 THE COURT: Okay. So when you are getting rid of
15 everybody with gender dysphoria, everybody that you are
16 getting rid of is transgender; right?

17 MS. LIN: That they're trans identifying, yes.

18 THE COURT: And you have not been able to point to
19 me any other medical classification that the military uses
20 that impacts one class of people; right?

21 MS. LIN: I mean, we treat the medical condition not
22 the class --

23 THE COURT: No, I understand you quote, unquote,
24 treat the medical condition --

25 MS. LIN: So if it's talking about heart disease,

1 the class of people would be ones with the heart disease in
2 the class.

3 THE COURT: Right. The people with heart disease
4 can be black or white, gay or straight, transgender or not,
5 male or female; right?

6 MS. LIN: Right.

7 THE COURT: There's no other quote, unquote, medical
8 condition that you're trying to treat that gets rid of a
9 suspect -- gets rid of a class of people; right?

10 MS. LIN: That's my un --

11 THE COURT: And when you said that people with
12 gender -- gender dysphoria lack humility and honesty and
13 integrity, you all agreed with me that you have never for any
14 other medical condition undertaken such a view; right? Making
15 those aspersions against people with a classification? It's
16 docket 66. You haven't ever done that; right?

17 MS. LIN: I don't know.

18 THE COURT: Okay. When you told me -- when I asked
19 you this in writing you all told me no, we haven't done this
20 before. This is the first time the military is arguing --
21 with by the way what you have admitted is zero evidence --
22 that a condition makes people dishonest or lacking integrity.

23 MS. LIN: I mean, I think that the DoD policy as
24 issued stated the standard by which all military service
25 people need to meet.

1 THE COURT: Yeah. And you say that people with
2 gender dysphoria inherently cannot meet that standard.

3 MS. LIN: That's not in the DoD policy, the DoD
4 policy states what the policy is.

5 THE COURT: The policy.

6 MS. LIN: That includes the ability --

7 THE COURT: Have you read the policy, Ms. Lin,
8 because it has that language in it?

9 MS. LIN: Yeah, it's stating the policy.

10 THE COURT: The policy is that only people who are
11 honest, selfless, have integrity, are disciplined, et cetera,
12 et cetera, et cetera, can serve. Therefore, people with
13 gender dysphoria can't serve. Now what does that tell us
14 about what the policy says about people with gender dysphoria?
15 It tells us that the policy is, is that people with gender
16 dysphoria inherently are not honest, do not have integrity,
17 and are not disciplined.

18 MS. LIN: Your Honor, I mean, the policy also talks
19 about military readiness, talking about, you know, without the
20 need for special accommodation. So for every characterization
21 that doesn't mean that they meet all of the characterizations.
22 So I guess --

23 THE COURT: Oh, so they might be -- so some
24 transgender might lack integrity and other people might lack
25 discipline?

1 MS. LIN: We're focusing on unit cohesion and
2 military readiness --

3 THE COURT: All right. Let's get to unit cohesion
4 and military readiness.

5 So with respect to military readiness, those are
6 pages 57, 58, 59 of my opinion. And --

7 MS. LIN: Your Honor, can you give me a second,
8 because I have the Westlaw version of your opinion. So which
9 sections are you getting to?

10 THE COURT: Application of intermediate scrutiny.

11 MS. LIN: Okay. Got it.

12 THE COURT: It says, defendant's first argue that
13 DoD, quote, is concerned about subjecting those with a history
14 of gender dysphoria to the unique stresses of military life.
15 And then I go on to explain what you all agree, and everything
16 with respect to military deference was with respect to gender
17 dysphoria; right? What you all argued?

18 MS. LIN: Yes.

19 THE COURT: Okay. So my response was based on
20 gender dysphoria, because as we agreed, my response is that
21 the Mattis policy is outdated with respect to gender
22 dysphoria, because the treatment was not as well known in
23 2018, and because people who are transgender or with gender
24 dysphoria have not openly served. That all remains correct,
25 right, or the same?

1 MS. LIN: Yes.

2 THE COURT: The same with respect to the discussion
3 of the AMSARA report, you still only identified one of 11
4 issues. The ten other issues supported people with gender
5 dysphoria and transgender serving in the military; right?
6 That entire discussion hasn't changed; right?

7 MS. LIN: Correct, other than the standard of
8 review, because this is Your Honor is applying the
9 intermediate scrutiny.

10 THE COURT: I understand. But even if we have
11 rational review, you have to have some something. I just want
12 to make sure that when I'm sort of drafting what I draft after
13 this that we are all on page that with respect to the
14 argument, the argument stays the same. You have no evidence
15 of issues with military readiness and people with gender
16 dysphoria; right?

17 MS. LIN: Right, Your Honor. I think we would --

18 THE COURT: Ms. Lin, I'm going to do this, okay.

19 MS. LIN: Okay.

20 THE COURT: Now, with respect to unit cohesion, we
21 say DoD reasonably determining that exempting individuals with
22 gender dysphoria, who have undergone gender transition or seek
23 to do so, would undermine good order and discipline, et
24 cetera, et cetera, a contrary approach would risk eroding
25 reasonable expectations of privacy by other crew members;

1 right?

2 MS. LIN: Your Honor's reading from your own
3 opinion?

4 THE COURT: Yeah.

5 MS. LIN: Yes.

6 THE COURT: Okay. And then the next paragraph,
7 obviously would fail, would be taken out if -- would change
8 based on "exhibits symptoms consistent with gender dysphoria,"
9 because you've now told me what that means; right? So the
10 paragraph on page 60, the second paragraph of unit cohesion,
11 good order, and discipline would presumably change; right?
12 The paragraph starting "These justifications fail."

13 MS. LIN: And Your Honor's assessment is that --

14 THE COURT: This paragraph would actually -- this is
15 the one paragraph we've identified so far, other than the
16 level of review, you claim that we would have to change --
17 that I would have to change in my opinion; right?

18 MS. LIN: Yes.

19 THE COURT: But even then I went on to address the
20 other unit cohesion policies with respect to the Mattis
21 policy; right?

22 MS. LIN: Yes.

23 THE COURT: And then -- and we're going to get to
24 this a bit more, even if the military ban had focused solely
25 on those diagnosed with gender dysphoria, defendants do not

1 identify any problem that needs a new solution, right? See
2 that paragraph?

3 MS. LIN: The -- this is the paragraph starting with
4 "Even if the military ban."

5 THE COURT: Yeah. We're going to get to that in a
6 moment, but that obviously wouldn't change, because that's
7 assuming that the policy only covered people with gender
8 dysphoria.

9 MS. LIN: Correct.

10 THE COURT: And then the discussion of what the
11 plaintiffs have testified from their own personal experience
12 that wouldn't change; right?

13 MS. LIN: Right.

14 THE COURT: And the disproportionate costs wouldn't
15 change; right?

16 MS. LIN: Right.

17 THE COURT: The exemption provision wouldn't change;
18 right?

19 MS. LIN: The exemption --

20 THE COURT: -- provision, my discussion of it
21 wouldn't change; right?

22 MS. LIN: I think there was -- and I'm not sure if I
23 recall this, but the exemption, I think there was discussion
24 before what -- what --

25 THE COURT: -- attempted to transition means.

1 MS. LIN: Correct.

2 THE COURT: And you still don't have a answer for
3 me; right?

4 MS. LIN: So our position remains that because the
5 DoD policy is only trying to address a medical condition,
6 we're only talking about people who are transitioning in the
7 context of having had gender dysphoria. So people who had
8 gender dysphoria and who had then transitioned or attempt to
9 transition, then that would be the ones that fall within the
10 three items under the waiver provision.

11 THE COURT: But the policy also requires them to
12 live in their biological sex; right? So you would cover
13 anyone who has transitioned. That would cover anyone who has
14 transitioned or has attempted to transition even
15 non-medically.

16 MS. LIN: Yes. I'm talking about a disqualifying
17 portion of the DoD policy.

18 THE COURT: Okay. I just want to make sure that the
19 DoD policy, the Hegseth policy, putting the exemption aside,
20 excludes from military service anyone who won't live in their
21 biological sex; right? It's one of the criteria.

22 MS. LIN: Correct.

23 THE COURT: Okay. All right. The animus section
24 wouldn't change, right? I mean, you still have the same words
25 in it.

1 MS. LIN: Yes.

2 THE COURT: You're still calling them all these
3 names; right?

4 MS. LIN: Right. But I think it's a little bit
5 different when the presumption or the assumption was that
6 we're talking --

7 THE COURT: Ms. Lin, stop saying it was a
8 assumption. Stop. I didn't assume anything. I took the
9 Secretary of Defense at his word. So if you want to say to
10 me, I guess -- so stop staying it was an assumption. Okay.
11 Say, if you decided to take Secretary of Defense at his word
12 then blah.

13 MS. LIN: Okay.

14 THE COURT: If I decide to take -- if I decide I
15 won't take Secretary of Defense at his word, if I decided that
16 he was either lying to the American people or just being very
17 loose with his language or didn't know what he was talking
18 about, if I make one of those assumptions, then we still have
19 animus, right, because we still -- I know you don't think that
20 there was animus initially, but the analysis is still the
21 same. We still have all the negative connotations. We still
22 have pure conjecture as to all those negative connotations.
23 We still have no support that people with gender dysphoria
24 impact military readiness. We still have no support for the
25 fact -- the allegation, that people with gender dysphoria

1 impact unit cohesion. And we still don't have any evidence
2 about your cost concerns.

3 So -- and the most important thing, which we're
4 going to get to now is everything that this policy does, if
5 all it does is address gender dysphoria, it's already
6 accounted for in the policies that were in existence on
7 January 19th, 2025. So if this only covers people with gender
8 dysphoria, explain to me why it's needed. Because the
9 policies already in place account for every single thing that
10 is in the guidance that you just gave me this morning.

11 MS. LIN: This is more restrictive than the prior
12 policy.

13 THE COURT: Yeah, but --

14 MS. LIN: So that's why it's needed.

15 THE COURT: No, no, that's not why it's needed,
16 that's what it does. But why is it needed? Why does it need
17 to be more restrictive? The current policies already deal
18 with suicide ideation before you get into the military. The
19 current policies already require a period of stability once
20 you're in the military; right? And they require you to be
21 physically and mentally fit already. So explain to me -- and
22 by the way, I looked at this new guidance this morning, which
23 I have here somewhere.

24 All right. If you go to the guidance, Ms. Lin.

25 MS. LIN: I have the guidance in front of me.

1 Unfortunately, it's just on a iPad.

2 THE COURT: Okay. That's fine.

3 Okay. Let's go to page 2. It says -- it's the
4 second full paragraph "Per DoD"; right?

5 MS. LIN: Per DoD instruction.

6 THE COURT: Yeah.

7 MS. LIN: Okay. So I'm there.

8 THE COURT: Per DoD instruction 6025.19, quote,
9 Individual Medical Readiness Program, July 13, 2022, IMR is a
10 military service command and individual service member
11 responsibility. As a condition of continued participation in
12 military service, service members have a responsibility to
13 report medical issues, including physical, dental, and mental
14 behavioral health that may affect their readiness to deploy,
15 ability to perform their assigned mission, or fitness for
16 retention in military service to their chain of command. Did
17 I read that correctly?

18 MS. LIN: Yes.

19 THE COURT: How does that not already capture anyone
20 who might be having issues because of gender dysphoria?

21 MS. LIN: Your Honor, the department wants to make
22 it clear what the -- I mean, this is issued today, but, you
23 know, it is reaffirming a prior standard, but that doesn't
24 mean --

25 THE COURT: Ms. Lin, look, according to a lot of

1 people, I'm like a total moron. So since I'm a total moron,
2 please explain to me, because maybe I'm just not getting it,
3 how the Individual Medical Readiness Program, which already
4 requires service members or their commanders to report anyone
5 who has a medical issue with respect to mental or behavioral
6 health, why we need to get rid of all people with gender
7 dysphoria if that's already in place? It's already covering
8 anyone who might create issues because of gender dysphoria.

9 MS. LIN: Your Honor, I'm -- I think, you know, the
10 government disagrees with the Court as to how best implement a
11 DoD policy or what that policy should say or whether the
12 policy is even warranted.

13 THE COURT: But tell me why you disagree. Just tell
14 me why. I know that you disagree, but it's not enough. You
15 can't just say, you know, what we decided that -- we decided
16 that all people from Uruguay are inherently mentally disabled,
17 so we're going to get rid of all people from Uruguay, right.
18 You could say that. But I would ask, don't you already have a
19 policy that addresses that? If everyone from Uruguay was
20 mentally unfit, they would already be covered, they would
21 already be ferreted out by the 6025.19.

22 MS. LIN: But the policy is changing the scope,
23 so --

24 THE COURT: Right. And so my question is -- the
25 question from me on the record is, is that changed because a

1 deliberative process that the military actually thinks is
2 needed to ensure military readiness or unit cohesion or is it
3 pretext, is it basically just a excuse? See, that's why I'm
4 asking these questions. I'm not doing it for sport. That's
5 the question. And yet right now everything in the record is
6 that it's pretext. There is nothing in the record that this
7 was a deliberative function. As of today, you can't even tell
8 me if Secretary Hegseth looked at this.

9 MS. LIN: Your Honor, let me just clarify, as to
10 Secretary Hegseth, I mean, we're not going to be providing a
11 declaration --

12 THE COURT: No, I know you're not --

13 MS. LIN: -- this is deliberative process and we
14 think --

15 THE COURT: No. Ms. Lin, you're not going the hide
16 behind deliberative process. No.

17 MS. LIN: I think Your Honor disagrees --

18 THE COURT: -- I'm not asking you what the
19 deliberation was, although I'm pretty sure I could. I'm
20 asking you who did the deliberating and you won't tell me
21 because you don't know.

22 MS. LIN: Your Honor, I think if you construe -- and
23 it sounds like you are construing the scope of the DoD policy
24 to be broader than, you know -- then we appeal from that
25 interpretation. But our guidance today was merely to tell you

1 that we -- our position is consistent, has been consistent
2 since the beginning, which is that we're only addressing
3 people with gender dysphoria. That's all we're trying to do
4 today. If Your Honor disagrees still and still wants to take
5 into account the Secretary's tweet, then that's where we are,
6 but --

7 THE COURT: I'm not just taking into account the
8 Secretary's tweet, I'm taking into account the policy, all
9 right. And I am going to issue a further opinion on this to
10 take into account this new guidance, which is why I'm asking
11 these questions. All right.

12 So please explain to me how people with gender
13 dysphoria are causing problems that require a new policy given
14 that DoD instruction 6025.19 already requires commanders to
15 report people who are -- who have any mental or behavioral
16 health issues.

17 MS. LIN: Your Honor, are you talking about why this
18 policy today is necessary or whether -- why the DoD policy
19 from February 26th is necessary --

20 THE COURT: -- February 26th policy as now -- with
21 new guidance.

22 MS. LIN: So that policy, again, like I mentioned
23 before is to make it more -- is stricter than the prior
24 policy.

25 THE COURT: I understand it's stricter.

1 MS. LIN: That was the purpose of that that's why it
2 was necessary.

3 THE COURT: No, no, the fact that it's stricter
4 doesn't make it necessary. The fact that it's stricter just
5 makes it stricter. I'm trying to get at what makes it
6 necessary.

7 So answer my question. DoD instruction 6025.19,
8 Individual Medical Readiness Program says it is the command's
9 responsibility and the individual service person's
10 responsibility, as a condition of continued participation in
11 military service, service members have a responsibility to
12 report medical issues, including physical, dental, and mental
13 or behavioral health that may affect their readiness to
14 deploy, ability to perform their assigned mission, or fitness
15 for retention in military service to their chain of command.

16 If I have gender dysphoria, and I'm not getting
17 treatment, and so it's very bad and it's affecting my ability
18 to serve, I would already be covered by 6025.19, wouldn't I?

19 MS. LIN: Your Honor, under the prior policy,
20 though, I'm not positive that gender dysphoria, given the
21 exemptions and --

22 THE COURT: No, no, I understand --

23 MS. LIN: -- the policy, so there's no need for them
24 to identify themselves, but I honestly do not know whether --

25 THE COURT: Just read it. If someone has a

1 mental -- see here's the disconnect, Ms. Lin, people with
2 gender dysphoria in treatment no longer have gender dysphoria
3 after they're treated. The 2025 medical literature review
4 that was cited by the Action Memo says quite clearly that
5 gender dysphoria is highly treatable. Highly treatable.

6 And --

7 MS. LIN: Your Honor, that's a matter of scientific
8 debate or --

9 THE COURT: Ms. Lin, I'm not -- I'm not the one who
10 put that medical literature review into the policy. The
11 defense did. You did that.

12 MS. LIN: Yes. And those documents are the
13 documents --

14 THE COURT: -- asking for document --

15 MS. LIN: -- that doesn't mean we ascribe to every
16 sentence in those documents. A decision maker could consider
17 documents, that doesn't mean that everything in the document
18 is something that they attest to.

19 THE COURT: Okay. But overall the document has to
20 support the conclusion; right?

21 MS. LIN: And we think it did.

22 THE COURT: Okay. Well, then you haven't read the
23 studies, because you hadn't read them the last time you were
24 before me. Maybe you guys have taken the time now to actually
25 read them. But trust me, those policies do not support the

1 conclusions that the Action Memo took from them. But put that
2 aside for a moment, answer my question. Why is stricter rules
3 necessary for gender dysphoria if 6025.19 already covers
4 commanders and service people reporting people with mental or
5 behavioral health issues.

6 MS. LIN: Yeah, Your Honor, this provision is
7 talking about that they may affect readiness, deployability,
8 to perform their assigned missions, and the prior policy
9 seemed to be operating under the assumption that that was not
10 the case --

11 THE COURT: It wasn't an assumption.

12 MS. LIN: -- gender dysphoria.

13 THE COURT: Ms. Lin, answer my question.

14 MS. LIN: I'm trying to answer my question.

15 THE COURT: No, you're not, Ms. Lin. Let me make it
16 more clear for you, I can have gender dysphoria, be under
17 treatment, and be physically and mentally fit to serve. Have
18 no mental issues, problems, have no deployment problems, have
19 no problems for fitness for retention. And this policy would
20 still get rid of me. And what I'm asking is why is that
21 necessary? And you all say it's necessary because it's
22 necessary, because we need to make it more strict. And I'm
23 saying if I have gender dysphoria, and I'm in the military,
24 and I am showing signs of distress, I'm mentally unfit because
25 my gender dysphoria is not getting treated or for whatever

1 other reason, 6025.19 would already usher me out of the
2 military.

3 So why do we need more -- why do we need to get rid
4 of people with gender dysphoria, who have been successfully
5 treated if they're not presenting physical, dental, and mental
6 behavioral health issues, and if they are presenting physical,
7 dental, and mental behavioral health issues why aren't they
8 already covered by 6025.19?

9 MS. LIN: And I can only repeat what I've said
10 before, which is that the prior policy was much more generous
11 in terms of -- it reflected the military decision at that time
12 that gender dysphoria didn't necessarily cause the same level
13 of readiness or unit cohesion or lethality issues as the
14 current military decision. So that's why we need to clarify.
15 I mean, it's always good for the Government to clarify to the
16 people governed by a new policy as to why --

17 THE COURT: Ms. Lin, you're still not answering my
18 question. You're still not answering my question.

19 MS. LIN: I mean --

20 THE COURT: Mr. Lynch, do you understand my
21 question?

22 MS. LIN: I understand the question, Your Honor.
23 Yes.

24 THE COURT: Okay. What's the answer?

25 MR. LYNCH: I'm not sure I have --

1 THE COURT: You guys are saying that we need to get
2 rid of people with gender dysphoria and who have ever had a
3 history of gender dysphoria; right? And I'm asking why. And
4 you're saying that because they cause deployment issues, even
5 though you have no evidence that they do. They might cause
6 problems performing their assigned mission -- you can be
7 seated, Mr. Lynch -- even though you have no evidence that
8 they do, et cetera, et cetera. You have no evidence that they
9 do any of that. And I'm saying, okay, let's pretend you're
10 right, they would already be covered by a policy. And the
11 reason I'm asking this is because it was *City of Moreno*,
12 right, Sam? The Supreme Court took into account the fact that
13 the policy -- the law they were striking down was basically
14 trying to do something that the laws on the books already
15 did.

16 MS. LIN: Yeah, I mean, Your Honor, I think that you
17 made the decision you did. And I can't provide anymore
18 information than what all --

19 THE COURT: Because there is no answer, Ms. Lin.
20 Because there is no answer to the question.

21 MS. LIN: The answer, Your Honor, is that the
22 military judgment in this case, is that people with gender
23 dysphoria poses concerns. And this is a predictive judgment
24 as well. And more importantly, this is a rational basis
25 review in the rational basis review realm. They could even

1 come up with hypothetical justifications to justify. And I
2 understand Your Honor ruled what you did in terms of the cases
3 where is it really pretext or is it not pretext or whether
4 there's legitimate government interest, and Your Honor has
5 already ruled on that. So I don't want to keep repeating the
6 same thing Your Honor has already done. But we just
7 respectfully submit that under the rational basis review, and
8 plus the military deference combined, puts a very high
9 threshold for the Court, to allow the Court to go and reweigh
10 the evidence, to rebalance the information that the military
11 leaders had before them --

12 THE COURT: You said leaders, right now we only have
13 one person who's --

14 MS. LIN: Decision maker, I'm sorry.

15 THE COURT: Decision maker, one. That's all that's
16 in the record is one person.

17 MS. LIN: I think that the presumption of good faith
18 in government activities should be taken into account as well.
19 We'd certainly --

20 THE COURT: Sure, tell me who -- tell me who --

21 MS. LIN: The fact that there are people that are
22 involved in this deliberation is not negated by my inability
23 to tell you the names of those people.

24 THE COURT: How is it not? You guys have been --
25 this is the fourth hearing we've had on this. You guys keep

1 telling me I need to defer to the military. You guys keep
2 telling me that I don't know what I'm doing --

3 MS. LIN: We certainly did not do that, Your
4 Honor.

5 THE COURT: No, you're right. You haven't. Sorry,
6 lots of people in the world. Not you guys. I take that back.
7 Strike that too.

8 But you guys certainly contend that I'm not supposed
9 to be involved in military matters. And what I'm saying is
10 there's literally nothing in the record that A, people with
11 gender dysphoria in the military is even a problem. B, who is
12 trying to solve for that problem. Or three, why the solution
13 is the right solution. There's just no evidence.

14 MS. LIN: To be clear, Your Honor, we did not raise
15 the justiciability argument. So the way that you characterize
16 our argument, I don't necessarily agree. So, Your Honor,
17 clearly is reviewing the policy --

18 THE COURT: Yeah, and you're saying I shouldn't.

19 All right. First of all, also you said it was
20 predictive. It's still the case, right, that you all haven't
21 reviewed the service record of people with gender dysphoria;
22 right? You don't know sitting here today --

23 MS. LIN: I do not know.

24 THE COURT: Right? Because no one has looked at
25 that information. The only information you have is from 2018;

1 right?

2 MS. LIN: And the sub -- the other data that Your
3 Honor does not believe supports the ultimate conclusion.

4 THE COURT: Yeah, I don't believe it does because I
5 read, because I'm literate and I read the studies. All right.

6 Let me also ask you this, this says this policy is
7 getting rid of anyone with gender dysphoria or who's ever had
8 a history of it; right?

9 MS. LIN: Correct.

10 THE COURT: And if I go to the *DSM-5* I can learn
11 that people can have gender dysphoria as young children;
12 right?

13 MS. LIN: Yes.

14 THE COURT: And I can also learn that gender
15 dysphoria is treatable; right? And if I looked at the 2025
16 literature review that was in the Action Memo I would learn
17 that gender dysphoria is highly treatable -- let me finish my
18 question -- and I would learn that gender affirming care is
19 quite helpful for people who have gender dysphoria. And that
20 people who have had gender affirming care are much, much
21 better off after that care.

22 Now, why are people who have a condition that is
23 treated and has been treated, and are no longer suffering from
24 that condition not allowed to serve?

25 MS. LIN: Your Honor, I think that's the kind of

1 medical debate that is beyond my knowledge here. But just to
2 say that they are -- they're treatable or that they could be
3 treated, I think there's also a debate about whether that are
4 in fact treatable. There is treatment, but that doesn't mean
5 that they could be -- that somehow people -- I mean, maybe
6 it's possible that people who had gender dysphoria no longer
7 suffer from it, and that's -- we don't dispute that and that's
8 why there is -- the waiver talks about some levels -- time
9 period of stability is recognizing that fact.

10 THE COURT: -- talking about people --

11 MS. LIN: I'm sorry.

12 THE COURT: The waiver says period of stability in
13 their biological sex. And all of the studies will tell you
14 that not providing people with gender affirming care, not
15 providing them with hormone therapy actually makes them
16 depressed. Do you know what your policy does in effect? Do
17 you realize what it does if we limit to people with gender
18 dysphoria, it says you can serve if you serve in your
19 biological sex. Do you know what all of the studies say about
20 a what happens to people who live in their biological sex,
21 that's when they get gender dysphoria. You're basically
22 creating a policy that the 2025 medical literature review that
23 you all put into this record, not me, says will make people
24 who don't currently have gender dysphoria, make them have
25 gender dysphoria. Now, how is that sensical?

1 MS. LIN: I mean, I disagree with that
2 characterization, but --

3 THE COURT: Well, all right, let's look at the
4 *DSM-5*, I'm not making this stuff up.

5 MS. LIN: If I could respond to Your Honor's
6 question --

7 THE COURT: Stop. Stop. I'm going to quote from
8 the *DSM-5* and then I'm going to let you say whatever you want.

9 Go ahead. I'm still looking for this, but I don't
10 want to keep you. So go ahead.

11 MS. LIN: My only point was that gender dysphoria is
12 a condition that is also classified with significant clinical
13 distress for at least six months. And so the legitimate
14 government interest here is that people who have this type of
15 significant clinical distress and, therefore, are unable to
16 function in various areas of functioning, is a legitimate
17 grounds for disqualifying. And that's all we're trying to do
18 here. And Your Honor is talking about forcing people to serve
19 in a sex that they do not want to do --

20 THE COURT: I'm not talking about that, that's what
21 the policy says.

22 MS. LIN: That's Your Honor's interpretation of the
23 policy (Cross-talk) doesn't do anything. People could just --
24 if they have gender dysphoria they will be disqualified.

25 THE COURT: Ms. Lin, the policy says that they have

1 to live in their biological sex. I don't --

2 MS. LIN: Those who are not disqualified. Right.

3 THE COURT: But if you don't live in your biological
4 sex you're disqualified.

5 MS. LIN: That's a disciplinary issue separate from
6 a disqualification. So the way I understand it is that if
7 someone has a current gender dysphoria diagnosis and is
8 disqualified -- then the person is disqualified unless a
9 waiver applies. Then there will be -- this person would then
10 not be trying to serve in a sex that is of their biological
11 sex.

12 THE COURT: But someone who has gender dysphoria is
13 under distress, is already banned by the current policy. That
14 person is already banned so we're not talking about that
15 person anymore. We're talking about people who have never had
16 a history of gender dysphoria that has ever been treated or
17 who are stable in their -- in the sex that they identify
18 with.

19 MS. LIN: But we do have people who are newly
20 diagnosed past few years --

21 THE COURT: But those people are still covered by
22 the current policy. If I get diagnosed with gender dysphoria
23 tomorrow and I'm a major in the Air Force, I'm already covered
24 by the current policy. I'm also already going to be found out
25 or analyzed by 6025.19. So it just goes back to my question

1 as to why this is needed. And I think you and I both know the
2 answer to that, and it's because this isn't about addressing a
3 medical condition.

4 MS. LIN: That is not my understanding, Your Honor.
5 That's not the government's position --

6 THE COURT: Okay. Well, then explain to me -- then
7 explain to me --

8 MS. LIN: I cannot --

9 THE COURT: No, someone has to tell me why. I mean,
10 someone has to tell me why this policy is necessary to achieve
11 the ends of military readiness and unit cohesion. And what
12 you're saying is we need to get rid of people who have current
13 gender dysphoria. And what I'm saying is the current policy
14 already does that. And what you haven't told me is why we
15 need to get rid of people who have ever had gender dysphoria
16 or who have transitioned, or who have been stable in their
17 diagnosis for over 18 months, and just give me a reason.

18 MS. LIN: Your Honor, that process is being
19 determined through the administrative separation board as to
20 whether someone who should be disqualified subject to the
21 scope of the DoD policy. And I fully understand Your Honor
22 disagree with why the government is doing this. Your Honor
23 believe that this is done because of reasons other than the
24 legitimate government interest that we proffered.

25 THE COURT: It's not what I believe.

1 MS. LIN: Your opinion certainly says that.

2 THE COURT: Hold on. Hold on, Ms. Lin. Hold on. I
3 did not write about what I believed, just to be absolutely
4 crystal clear. I wrote about what was in the record and
5 what's not in the record. Every single thing in my opinion,
6 every single sentence was supported by a case cite or a record
7 cite --

8 MS. LIN: My apologies, Your Honor.

9 THE COURT: That --

10 MS. LIN: My apologies characterizing Your Honor's
11 opinion, the opinion -- your opinion says what it says.

12 THE COURT: My opinion is based on -- no, I want to
13 be crystal clear about this. My opinion is based on the
14 evidence in the record before me. If there is a single part
15 of my opinion, if there's a single sentence that you think is
16 unsupported by the evidence, if it's a factual question, let
17 me know.

18 MS. LIN: And we did today about the scope of the
19 DoD policy.

20 THE COURT: Yes. And I'll change that, obviously,
21 but I didn't have that when I wrote my opinion.

22 MS. LIN: Fair enough, Your Honor.

23 THE COURT: Hold on. All right. So I'm just
24 looking at the opinion, which does not allow -- and the
25 policy, which does not allow for transgender people, or people

1 with gender dysphoria who have been treated for gender
2 dysphoria, who have received treatment for it, or people who
3 have had gender affirming care to live in the barracks of
4 their gender identity, it requires them to have the grooming
5 standards, et cetera, et cetera, for people of their
6 biological sex; right?

7 MS. LIN: Correct.

8 THE COURT: Okay. All right. Can we get to the
9 policy now, the guidance, because I don't understand this. If
10 you look at the first page of the policy.

11 MS. LIN: Yes.

12 THE COURT: It says, if you look at records
13 review.

14 MS. LIN: Oh, I'm sorry, which policy March --

15 THE COURT: Today's guidance.

16 MS. LIN: Today's policy. Okay. What are you
17 directing my attention to?

18 THE COURT: The first page where it says "Records
19 review."

20 MS. LIN: Yes, got it.

21 THE COURT: The primary means of identifying service
22 members who have a current diagnosis or history of or exhibit
23 symptoms consistent with gender dysphoria who are no longer
24 eligible for military service will be through reviewing
25 medical records. Did I read that correctly?

1 MS. LIN: Yes.

2 THE COURT: So you guys are what, now going to go
3 through 1.3 million medical records to see if someone has
4 diagnosed gender dysphoria?

5 MS. LIN: I don't know how that process is going to
6 be implemented.

7 THE COURT: Well, how else could it be implemented?
8 Unless you're going to target certain people?

9 MS. LIN: The policy says they will be reviewing
10 medical records.

11 THE COURT: The policies are big on passive tense,
12 someone reviewed, someone considered evidence, someone will
13 review, who will be reviewing medical records? Are we
14 seriously going to spend -- now much money is that going to
15 cost, by the way? Because I bet you it's going to cost more
16 than \$5.2 million.

17 MS. LIN: Your Honor's cost benefit analysis is what
18 it is and we don't -- you know, sometimes it's just the mere
19 fact that -- well, let me strike that --

20 THE COURT: I just want to make sure I understand
21 this -- you're the one who's pointing me to this new guidance;
22 right?

23 MS. LIN: Correct.

24 THE COURT: So are you all saying that every
25 service -- that we're going to, I don't know, go through every

1 single person's medical records to determine whether they have
2 a history of gender dysphoria?

3 MS. LIN: We're not saying that.

4 THE COURT: Well --

5 MS. LIN: It's not saying that, but I think there
6 will be a process. Remember, this is a guidance to the
7 military departments --

8 THE COURT: Yeah, so how --

9 MS. LIN: -- services.

10 THE COURT: How do you review medical records other
11 than by reviewing them? I mean, one thing I assume you're
12 going to do is you're going to have a tag that you do for
13 people who have gotten treatment for gender dysphoria in the
14 past, you're going to get rid of all those people. But how
15 else are you going to do this?

16 MS. LIN: I don't know the implementation steps.
17 And, Your Honor, honestly I don't think this is relevant to
18 the idea that --

19 THE COURT: I think it's quite relevant, because
20 here's why, if these people were actually creating problems
21 you wouldn't have to go looking in medical records for them.
22 You all are saying that people with gender dysphoria are
23 causing such a military readiness problem that we need to get
24 rid of all of them, and yet you all don't even know how many
25 you have and you don't know who they are. The only way you're

1 going to find out who they are is by going through the medical
2 records of presumably hundreds of thousands of soldiers.

3 Now, doesn't it look to you, that you all or the
4 defendants, are potentially looking for a problem where one
5 doesn't exist? So why are you going to go to Sam's medical
6 records, Sam who is mentally and physically fit, Sam who has a
7 Bronze Star, Sam who has combat experience, we're going to go
8 to her medical records to find out if she has a history of
9 gender dysphoria. Even though, right now, today, she's in
10 active combat as is one of the plaintiffs. And then if they
11 have a history of gender dysphoria, even though today they're
12 mentally and physically fit, they're in combat, they've got
13 medals, we're going to get rid of them. Explain to me how
14 that passes rational basis? And by the way, if she is
15 exhibiting symptoms you're already going to get rid of them
16 based on 6025.19.

17 MS. LIN: Your Honor, the commanders are able to
18 access medical records even before today's policy.

19 THE COURT: Exactly. Bingo. But more to the point,
20 why are we getting rid of Sam? Sam was perfectly --

21 MS. LIN: This policy is not saying getting rid of
22 Sam. This policy is looking at the medical record to
23 determine who falls within the scope.

24 THE COURT: And then you get rid of them.

25 MS. LIN: In fact, we don't know how that's going --

1 there is the --

2 THE COURT: Well, hold on. Hold on. We do know,
3 because this policy guidance says somewhere that anyone with
4 this history must be removed. One second.

5 So if you go to page 2 of the record, on the second
6 to last paragraph, if a service member is identified as having
7 a current diagnosis or history of or exhibiting symptoms --
8 I'm sorry, if during a PHA.

9 MS. LIN: Second page of the policy?

10 THE COURT: The policy from today.

11 MS. LIN: Yeah, and --

12 THE COURT: If during a PHA.

13 MS. LIN: Okay. Got it.

14 THE COURT: A service member is identified as having
15 a history of gender dysphoria; do you see that?

16 MS. LIN: Yes.

17 THE COURT: They'll get a medical evaluation, have
18 to serve -- have to notify command. Further, such a service
19 member must, M-u-s-t, be categorized as, quote, not medically
20 ready and not deployable. And then they're going to be
21 recommended for administrative separation; right?

22 MS. LIN: Correct.

23 THE COURT: Okay. Why are we getting rid of Sam?
24 Why is she nondeployable? She's in combat right now. She's
25 been treating her gender dysphoria. She's been treating her

1 gender dysphoria for three years. She's living in her
2 preferred identify. It has caused no unit cohesion issues,
3 because you would have heard about it if they had. Why are we
4 getting rid of her?

5 MS. LIN: Your Honor, I think -- I don't have more
6 explanations to offer, other than that this is also a
7 predictive judgment about people who have gender dysphoria,
8 what kind of impact that will have --

9 THE COURT: Okay. Well, first of all, you keep
10 saying predictive even though we have experience. We don't
11 need a modern day Nostradamus. We have four years of
12 experience, you guys just haven't looked at it. But my bigger
13 question is if she does start creating problems, why don't we
14 address it then? Why are we pre-emptively getting rid of her?

15 MS. LIN: And that is the military leaders decision.
16 I mean, I understand that, you know, Your Honor would run the
17 military differently --

18 THE COURT: I wouldn't run the military at all.

19 MS. LIN: Understood.

20 THE COURT: I would be -- but that's not my
21 question. My question is, there has to be a rational basis
22 between what the government is doing and the goals it seeks
23 even if I just go to rational basis.

24 I'm just asking you -- I'm just asking you, we have
25 potentially hundreds if not thousands of people in the

1 military who are serving today, who are serving their country,
2 who have done it for years and decades some of these
3 plaintiffs. They've done it honorably. And they've had no
4 problems. And the people who had problems, they've already
5 been ushered out or they will be ushered out if they present
6 new problems. And the government is telling them you are
7 inherently unfit to serve.

8 And you know what is -- it's like I think people --
9 I mean, I think we sometimes forget when we're having these
10 discussions that there are people involved. There are people
11 who put on the uniform every day because they love their
12 country. And they're being told that you are inherently
13 mentally and physically unfit to serve, even though there is
14 nothing in the record that says it. And what you're telling
15 me is I just have to trust the people who did this, even
16 though you don't know who did it, even though you don't know
17 how they did it, and even though we all know that it was done
18 very, very quickly.

19 MS. LIN: Your Honor, I don't have more explanations
20 to offer other than, you know, we've gone through the three
21 days of hearing, we provided the answers that we did have. So
22 we respect Your Honor's decision and, you know, we are here
23 really to ask the Court to dissolve the injunction based on
24 this guidance today, but if Your Honor does not want to do
25 that then you would obviously deny that motion to dissolve.

1 But we would ask that the stay be extended until Your Honor
2 decides on the question of the motion to dissolve.

3 THE COURT: I'm not extending the stay.

4 MS. LIN: Understood. Would Your Honor then be
5 willing to grant us a stay -- the alternative question of a
6 stay pending appeal?

7 THE COURT: No, I'm not going to grant a stay
8 pending appeal. No. You want to get that -- if the D.C.
9 Circuit thinks they -- it needs to be stayed pending appeal,
10 you can ask them.

11 MS. LIN: So is the -- Your Honor is your oral
12 ruling --

13 THE COURT: No, I haven't made a oral ruling yet.
14 I'm not making --

15 MS. LIN: Okay. I just want to be clear.

16 THE COURT: I'm going to make a written ruling.

17 MS. LIN: Do you have an expected time, Your Honor,
18 when you expect to issue your written ruling -- you have no
19 ruling, so just trying to determine the timing, especially
20 given that you are also going to deny us the stay pending
21 appeal, and pursuant to Rule A we do have to ask Your Honor.
22 So I don't mean to continuously ask the Court the same
23 question.

24 THE COURT: No, it's fine. So what's going on right
25 now? Ms. Levi, by the way, do you want to say anything.

1 MS. LEVI: Well, I do want to address the timing
2 issue that's just been raised by Ms. Lin. Yeah, I mean
3 plaintiffs absolutely oppose the motion to dissolve the
4 preliminary injunction. And we, of course, oppose the motion
5 to stay the Court's preliminary injunction pending appeal. We
6 do ask for an opportunity to address the motion and the newly
7 issued guidance. And we want to do it in a way that is both
8 reasonable in light of the evolving situation that the
9 plaintiffs are facing. And we want to do it in a way that
10 minimizes the burden to this court and to the Court of Appeals
11 as well. And we want to make sure that plaintiffs have an
12 opportunity to both respond and ensure that there is, included
13 in the record, a response to the directive that we just
14 received this morning.

15 THE COURT: Well, what's the situation with the
16 plaintiffs now, are they now off administrative leave?

17 MS. LEVI: The ones that have been put in
18 administrative, to my knowledge have not been. But, Your
19 Honor, as you know your order went into effect at 10:00 a.m.
20 and I haven't had an opportunity to hear from all of the
21 plaintiffs.

22 THE COURT: All right. I want all of them off of
23 administrative leave today, Ms. Lin. They're off
24 administrative leave. I mean, that's the -- the injunction,
25 the injunction was very clear on the fact that I want the

1 plaintiffs restored to what their status was before all
2 this.

3 MS. LIN: Understood, Your Honor.

4 THE COURT: Here's what I'm -- I'm not going to --
5 I'm not going to dissolve it right now. I need to give
6 plaintiffs a chance to respond.

7 MS. LEVI: -- Your Honor.

8 MS. LIN: And without extending the stay.

9 THE COURT: Well, I'm trying to figure out what to
10 do here.

11 MS. LIN: I see.

12 THE COURT: I mean, I want anyone who was on
13 administrative leave taken off of leave and put back where
14 they were. I'm not staying that. If -- I guess what I could
15 do is, unless Ms. Levi, you want me to do that, to give you
16 know I don't -- I am willing to put off when you guys have to
17 send a letter to everyone, that was part of my injunction,
18 which you have to notify everyone today about the order. And
19 then you have to sort of confirm with me that you did it. I'm
20 willing to move that back.

21 MS. LIN: But the PI still went into effect this
22 morning already. This is just notification portion that
23 you're addressing; right?

24 THE COURT: Yeah, I'm trying to figure out how to
25 give people more time here, while getting the plaintiffs and

1 other transgender people back in service.

2 MS. LIN: In their biological sex --

3 THE COURT: No. No. No.

4 MS. LIN: Okay. So the PI is in place. Got it.

5 THE COURT: I mean, Ms. Levi, one thing we could do
6 is keep people in administrative leave, except for the
7 plaintiffs. And otherwise, you know, give you until Monday to
8 respond and -- mainly what I don't want to go into effect is
9 whatever's going to happen on March 26th. So if we can push
10 that -- Ms. Levi.

11 MS. LEVI: Yes, I want -- the plaintiffs are in
12 agreement with that, Your Honor. We really do want this to be
13 an orderly process. And I think given what we've seen, we
14 actually anticipate service branch directives following from
15 the directive that was issued today. And we don't want to
16 have to come back to the Court on any temporary orders. So we
17 really are looking to be reasonable, if we can get an
18 appropriate schedule to respond and to have the Court
19 consideration of the plaintiff's response and issuing a
20 written opinion, which we also understand will be appealed.
21 So appreciate you offering the opportunity to come up with --
22 we are open to something that would be reasonable and that
23 would do that.

24 THE COURT: Ms. Lin, do you have any ideas?

25 MS. LIN: I think it's fair for plaintiffs to

1 request a time -- some time to respond to our motion to
2 dissolve. We just ask that be very expeditious, but we also
3 would like to have the stay extended. And I'm not sure the
4 plaintiffs have concerns about continuing on the
5 administrative absence for a few days or until the Court can
6 rule on the motion to dissolve, only because there's also
7 issues about serving in the biological sex and you know
8 because they might not even have -- well, I mean, Your Honor's
9 PI is in place now, so they could serve in their preferred
10 gender, but it's creating issues for us. And that's why we
11 are urgently hoping to appeal Your Honor's decision, but we
12 want --

13 THE COURT: Well, I gave you guys 63 hours to
14 appeal. I mean, you guys could have -- first of all, I gave
15 you all plenty of notice. I told you exactly what day, I said
16 it was going to be the 18th or 19th. I gave it to you on the
17 18th. I said I was going to give you 48 hours to appeal. I
18 gave you 63 hours to appeal. That was not on me. I have not
19 granted a TRO in this action. I have bent over backwards to
20 sort of make this as transparent a process as I humanly
21 could --

22 MS. LIN: We appreciate Your Honor's three days and
23 we definitely recognize that, even though initially you said
24 one day, then you said two days, and you ultimately gave us
25 three days, we certainly appreciate that. But we also

1 indicated that to the extent that Your Honor disagrees with us
2 as to how you read the scope of the DoD policy, a new policy
3 was forthcoming that could confirm our position. And that's
4 why we're in the position we are in today.

5 So we didn't intend to delay, it was just that we
6 want to make sure when we go to the Court of Appeals, Your
7 Honor has had the benefit of our latest guidance and
8 everyone's looking at a more streamlined record or decision
9 from this court.

10 THE COURT: Well -- Ms. Levi.

11 MS. LEVI: Yeah, the plaintiffs are willing to agree
12 to a very short extension of this Court's temporary stay, if
13 it gives -- if it will include an opportunity for the
14 plaintiffs, in a reasonable way --

15 THE COURT: What timing do you want, Ms. Levi?

16 MS. LEVI: Appreciate the question.

17 THE COURT: Well, let me ask, before you answer
18 that, Ms. Lin, if we push back the March 26th date that's
19 currently in the policy, I'm willing to give you a couple more
20 days. I mean, my concern right now is I don't want the March
21 26th date going into effect, because that is what we have
22 been, you know, working towards getting an answer on before
23 then. So if you guys are -- if the plaintiffs are willing to
24 keep the administrative stays or whatever going a few more
25 days, for everyone except the plaintiffs, or even with the

1 plaintiffs, and you all are willing to push March 26th back
2 sounds like that's where we can have some agreement.

3 MS. LIN: We're not going to be able to agree to
4 extend the March 26th date.

5 THE COURT: Okay. Well, then you're stuck.

6 MS. LIN: Understood.

7 THE COURT: Because I'm not staying this past March
8 25th. So --

9 MS. LEVI: Your Honor, could I ask for the record,
10 because what the plaintiffs -- plaintiffs could agree to a
11 schedule if the defendants would agree not to put anyone -- to
12 initiate in any way anyone in administrative separation. But
13 I want to get some -- if it's possible, clarity from the
14 defendants what their position --

15 THE COURT: Ms. Lin.

16 MS. LIN: Your Honor, I'm not authorized to agree to
17 the proposal, to not --

18 THE COURT: What --

19 MS. LIN: -- separating. I'm not saying anyone -- I
20 don't know what the process for when the plaintiffs are going
21 to be -- when their separation process will begin, but I'm not
22 in a position to agree to extend any such separation
23 proceedings, the Administrative Board proceedings or
24 separation process.

25 THE COURT: Well, why not? Like, you just haven't

1 asked yet or there's a reason it has to start on the 26th.

2 MS. LIN: The process will begin on March 26th.

3 THE COURT: Okay. But it's in the like, you know,
4 aliens are coming down from outer space and forcing us to
5 start this process; right? I know that you might not have
6 agreement from your clients right now, but if you already know
7 from your client under no circumstances they're going to push
8 it back, do you know why?

9 MS. LIN: I'm not going to speculate, Your Honor.

10 THE COURT: All right. Well, we're going to do
11 this -- Ms. Levi?

12 MS. LEVI: Your Honor, I mean, the -- just to
13 suggest the Court could order that administrative separations
14 not begin by a specified date. And if we -- if plaintiffs
15 knew that that order was forthcoming, then again we could be
16 reasonable --

17 THE COURT: That order is already in place, I mean
18 that order is already in place.

19 MS. LEVI: Yes, Your Honor.

20 THE COURT: So --

21 MS. LIN: Yeah. And then because there is no stay
22 we may imminently go up on appeal. I'm not, you know, the --
23 so that decision is also out there. So I'm not saying that we
24 would just wait while things happen. Sorry, I'm not being
25 very clear. I don't have any decision making authority as to

1 when we might appeal, but just wanted to flag that an appeal
2 could be imminent as well.

3 THE COURT: All right. Ms. Lin, I would like you to
4 go back to your clients and say to them that the Court is
5 willing to keep the current posture going for a few more days
6 if --

7 MS. LIN: You mean reinstitute the stay, because the
8 current posture is that the stay is lifted?

9 THE COURT: We put the stay back in place for a few
10 days to give Ms. Levi a chance to brief this, to give me a
11 chance to write on it, and to give you all a chance to go up
12 to the Court of Appeals and not put them on a turn around of
13 like five minutes, because that's not good for anybody, if
14 they push back the March 26th date.

15 Now, if they're not willing to do that, on a time
16 schedule that you and Ms. Levi agree to, then I'll have Ms.
17 Levi file a opposition by Sunday at noon and I will get an
18 opinion out when I get the opinion out, probably on the 24th
19 or 25th.

20 But at that point you all, defendants, not me, not
21 Ms. Levi, are putting the D.C. Circuit in a very unpleasant
22 situation for them, because you're asking them to look at
23 something that's complicated, potentially, on a very short
24 turn around. And if that happens I just want the record to be
25 crystal clear it's because of defendants. Because I was

1 willing to move -- I was willing to extend the stay and it
2 sounds like Ms. Levi was willing to extend the stay by a few
3 days to give everyone a chance to do this.

4 MS. LIN: If the government agrees to push back the
5 March 26th date for the plaintiffs or for --

6 THE COURT: For everyone.

7 MS. LIN: For everyone.

8 THE COURT: I mean, so at this point whether or not
9 the D.C. Circuit is crunched for time is entirely in the hands
10 of the defendants. And I just want the record to be as
11 humanly clear on that as possible. And when you all seek --
12 you know, if you all refuse to push it back and seek an appeal
13 I'm ordering you to put in the record that this was offered to
14 make it so we're not all dealing with a fire drill.

15 MS. LIN: Yes. And Your Honor, and what is the
16 second option if we don't agree to extend the March 26th,
17 which I think is highly likely.

18 THE COURT: Well --

19 MS. LIN: What's the alternative schedule?

20 THE COURT: What would be -- I just don't understand
21 what the problem is for extending it. Like, why is it highly
22 unlikely? Right now it's extended. So why is it a burden on
23 you all to extend it a few more days?

24 MS. LIN: I'm sorry, the -- you are going to issue
25 an opinion saying that the stay is reinstated, if we agree?

1 THE COURT: I don't understand -- you just said it's
2 highly unlikely the defendants will agree to push back the
3 March 26th date.

4 MS. LIN: Right, because I thought we had offered
5 that exchange for Your Honor to continue -- to re-up the stay,
6 but if we don't agree to the March 26th what is the scenario
7 in that situation?

8 THE COURT: Well, I don't know a scenario at that
9 point. I don't know what the scenario is at that point. But
10 you said it was highly unlikely that you all would agree to
11 move the stay and can you explain to me why it's highly
12 unlikely, I mean, to move the March 26th date.

13 MS. LIN: I'm going to check, Your Honor. But this
14 is a coordinated, significant government operation and --

15 THE COURT: Well, now it's already on pause, so
16 what's the problem with pausing it a few more days?

17 MS. LIN: I'm going to have to check with the
18 client.

19 THE COURT: All right. Well, if you all aren't
20 willing -- Ms. Levi.

21 MS. LEVI: I just -- I do want to ask for at least
22 until Monday at 6:00 p.m., we would ask for Tuesday at 9:00
23 p.m. to respond. I understand that that puts the Court in a
24 challenging situation. And I understand how it will jam up
25 the Court of Appeals. We were given this policy that includes

1 extended references to other military policies 40 minutes
2 before the preliminary injunction went into effect. And we
3 would just ask for additional time beyond Sunday at noon, Your
4 Honor.

5 THE COURT: Okay. I want an answer by 2:30 as to
6 whether you all are -- if I extend the stay, whether you
7 all -- the defendants will push backward the March 26th date
8 until whatever date we need to, to give me a chance to write
9 an opinion and the Court of appeals to at least take up an
10 emergency stay decision. And if you are not willing to move
11 back the March 26th date, Ms. Lin, you better have a heck of a
12 reason. Because if you're not willing to push back the March
13 26th date, I am -- I'm not going to allow -- I'm not going to
14 remove the injunction.

15 MS. LIN: So if we do not push back March 26th --

16 THE COURT: I just want to make clear that if you
17 don't push it back, and Ms. Levi has until Monday or Tuesday
18 morning to file an opposition. And I file my opinion on
19 Tuesday or the 26th, you're still going to be subject to it.
20 You might get an emergency stay today. But I want it in the
21 notice of appeal, if you guys file an emergency stay, that we
22 had an offer on the table that would have allowed the stay to
23 continue, would have allowed this to proceed in a considered
24 manner and you all refused.

25 MS. LIN: Your Honor, I'm not sure that's what we

1 put in the notice of appeal --

2 THE COURT: I'm ordering you to or some attachment.

3 I'm ordering someone to notify --

4 MS. LIN: Okay. Pursuant to Judge Reyes's order
5 we're providing this information in the notice of appeal, but
6 I'm not positive that I understand the full scope of the
7 Court's point. You're saying the Court is willing to extend
8 the stay if the government agrees to move back the March 26th
9 deadline, but because assuming in that situation, the
10 defendants are not willing to push back 26th deadline, Your
11 Honor therefore did not -- did not re-up the stay.

12 THE COURT: Right?

13 MS. LIN: And hence the notice of appeal.

14 THE COURT: Right?

15 MS. LIN: And any associated -- got it.

16 THE COURT: Ms. Levi?

17 MS. LEVI: I do want the Court to know that the
18 defendants have extended the date for voluntary separations
19 beyond the March 26th deadline. So I just want that to be in
20 the record if the defendants will not agree to extend the date
21 for the involuntary separation.

22 MS. LIN: I'm not sure whether the representation
23 about what DoD is doing is accurate, but I'm going to confirm.
24 I have not heard an extension of the voluntary, but anyways
25 that's a separate process, because that would allow people to

1 have double the payment for separation, so that's --

2 MS. LEVI: -- it is not the same, but that is not a
3 separate process. That is part of the same executive order
4 and its implementation. And the plaintiffs will endeavor to
5 get that policy submitted to the Court if directed, but
6 defendants have closest access to those.

7 THE COURT: I thought everything was supposed to
8 already be put on my record? Anyway, here's what we're going
9 to do: Ms. Lin, everyone, you are going to go back to your
10 defendants, your clients, and you're going to say to them,
11 Judge Reyes, whatever we think of her opinion, has at least
12 been fair in not granting a TRO on three different occasions,
13 telling us exactly when she was going to rule so we had a
14 heads up, so we could prepare appeals and what not, and gave
15 us 63 hours for a stay.

16 Judge Reyes wants this to be an orderly process,
17 which is why she's done all of those things, and wants to give
18 plaintiffs an opportunity to respond to this new guidance,
19 wants to have a chance to have a written on it, and most
20 importantly wants the D.C. Circuit not to be jammed up on
21 timing. And so is saying she will extend the current -- she
22 will reinstate the stay until a date that you and Ms. Levi
23 agree upon if we push back the March 26th date.

24 If they do not -- you keep nodding your head no at
25 everything, Ms. Lin, I would strongly urge you to strongly

1 urge your clients to do that. If they don't do that, then we
2 will -- I will enter an order for a schedule based on that
3 and, you know, I can't rule before I get Ms. Levi's response,
4 so --

5 MS. LIN: What's the response date from --

6 THE COURT: Well, it depends on whether we move back
7 the March 26th date, if we don't move back the March 26th date
8 it will be 6:00 p.m. on Monday.

9 But I just want to make very clear, Ms. Lin, if you
10 all take that route, if you all refuse to cooperate, you all,
11 defendants, are the ones creating the fire drill. You all,
12 defendants, are the ones putting a time pressure on the D.C.
13 Circuit, not me and not Ms. Levi.

14 MS. LIN: Your Honor, but we are agreeing to -- I
15 mean, I guess if Your Honor doesn't want to extend the stay,
16 we are in a position -- okay. I see. I understand your
17 order.

18 THE COURT: I just want to make sure you're clear on
19 it.

20 MS. LIN: We'll order this transcript because
21 there's a lot of instructions so far. I hope I caught all of
22 them, but in our notice to appeal, if we do appeal, we're
23 going to obviously endeavor to allow Ms. Levi a chance to
24 respond to our motion to dissolve. And we're also hoping to
25 get the Court's written opinion on deciding on our motion,

1 but, you know, they're --

2 THE COURT: You will have the Court's written
3 opinion within 24 to 36 hours of whenever I get Ms. Levi's
4 brief. All right.

5 MS. LIN: So that's -- I see Tuesday, 6:00 p.m. or
6 possibly the next morning.

7 THE COURT: But here's the thing: We're all up
8 against a deadline because -- go ahead, Ms. Levi.

9 MS. LEVI: The Navy has already extended, based on
10 the policies that have been issued by the defendants, the date
11 for the involuntary separation to March 28th, Your Honor.

12 THE COURT: When did that happen?

13 MS. LEVI: I don't have the date of that --

14 THE COURT: Here's what we're going to do. I'm
15 done. You all meet and confer. You all figure out a time
16 line. If there are new policies, they were supposed to be put
17 on the docket. I don't know why I don't have them. Someone
18 put on the docket, someone send to me an email or joint status
19 report as to when this is supposed to start, whether you all
20 are willing to push it back if I reinstate the stay. And if
21 not, Ms. Levi, you guys come up with agreement that get your
22 brief in with enough time for me to write something. Okay?

23 I don't want to jam up the D.C. Circuit. That's my
24 like main concern here. That's why I was so -- I worked --
25 our chambers worked incredibly hard to get this opinion out

1 when we did, so that we would not jam up the D.C. Circuit. So
2 that we gave you all plenty of time to get and seek an
3 emergency stay. And that's what we're here for, I'm not
4 complaining about it. But what I don't want is to now jam up
5 the D.C. Circuit any way. All right.

6 MS. LIN: Understood, Your Honor.

7 THE COURT: You guys talk. You guys send me an
8 email or some sort of update by 2:30, by 3:00 o'clock to see
9 where we are. If we need to get back on the phone, we'll just
10 get back on the phone. No need to come back in. All right.

11 MS. LIN: So the deadline is 3:00 p.m. not 2:30?

12 THE COURT: Yes. Ms. Lin, Mr. Lynch, use your
13 considerable charm and skills to get your clients to agree to
14 this.

15 All right. Anything else?

16 MS. LIN: We'll do our best, Your Honor.

17 THE COURT: All right.

18 MS. LIN: Thank you.

19 (The proceedings were concluded at 12:41 p.m.)

20 I, Christine Asif, RPR, FCRR, do hereby certify that
21 the foregoing is a correct transcript from the stenographic
22 record of proceedings in the above-entitled matter.

23 _____ /s/ _____
24 Christine T. Asif
25 Official Court Reporter

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